

## **ADMINISTRATIVE PANEL DECISION**

Diamond Resorts Holdings, LLC v. Eduardo Amezcua Farfan  
Case No. D2022-1626

### **1. The Parties**

The Complainant is Diamond Resorts Holdings, LLC, United States of America (“United States”), represented by Jackson Walker LLP, United States.

The Respondent is Eduardo Amezcua Farfan, Mexico.

### **2. The Domain Name and Registrar**

The disputed domain name <thediamond-resort.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2022. On May 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 6, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the disputed domain name.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 10, 2022.

The Center appointed David Taylor as the sole panelist in this matter on June 29, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

Founded in 1992, the Complainant is engaged in the vacation ownership and timeshare industry. The Complainant has a network of some 350 vacation destinations in over 30 countries around the world.

The Complainant is the owner of a number of trademark registrations for DIAMOND RESORTS, including the following:

- United States Trademark Registration No. 3746815, DIAMOND RESORTS, registered on February 9, 2010;
- Canadian Trademark Registration No. TMA1011437, DIAMOND RESORTS, registered on December 18, 2018; and
- Mexican Trademark Registration No. 2015753, DIAMOND RESORTS (stylized), registered on June 27, 2019.

The Complainant is also the registrant of the domain name <diamondresorts.com>, which it uses for its public-facing website.

The disputed domain name was registered on July 23, 2020. The disputed domain name does not resolve to an active website. From late 2021, the Complainant began receiving reports from its members, indicating that the disputed domain name was being used in the furtherance of a fraudulent email scheme.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant asserts rights in the DIAMOND RESORTS trademark. The Complainant submits that the disputed domain name is identical or confusingly similar to its trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is using the disputed domain name to perpetrate fraud, by passing itself off as the Complainant using email addresses created under the disputed domain name.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant claims that the Respondent is attempting to pass itself off as the Complainant, in order to induce customers of the Complainant into making payments to the Respondent. The Complainant asserts that the Respondent registered the disputed domain name in order to trade off the name and goodwill amassed by the Complainant in its DIAMOND RESORTS trademarks in the furtherance of fraudulent activity.

The Complainant requests transfer of the disputed domain name.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

#### **6. Discussion and Findings**

In order to prevail, the Complainant must demonstrate, on the balance of probabilities, that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has rights in the DIAMOND RESORTS trademark, the registration details of which are provided in the factual background section above.

The disputed domain name consists of the word “the”, followed by a variation of the Complainant’s DIAMOND RESORTS trademark, whereby the space is replaced by a hyphen, and the letter “s” is omitted. As noted in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8, “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.” The Panel finds that the addition of the word “the” and a hyphen, and the omission of the letter “s”, do not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark, which remains clearly recognizable in the disputed domain name; see *Sanofi v. Domains By Proxy, LLC / Anass Habrah, Habrah LLC*, WIPO Case No. [D2022-0504](#) and *NG Biotech v. Whois Agent, Domain Protection Services, Inc. / Patrice SARDA*, WIPO Case No. [D2021-0177](#).

The Panel finds the disputed domain name to be confusingly similar to the Complainant’s DIAMOND RESORTS trademark. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

As noted above, the disputed domain name does not resolve to an active website. The Complainant has produced evidence indicating that the disputed domain name has been used to create email addresses, which have in turn been used to send emails to the Complainant’s customers. Those emails are designed to have the appearance of being sent from the Complainant itself, in an attempt to mislead the Complainant’s customers into making bank transfers to the Respondent.

Prior UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent; see [WIPO Overview 3.0](#), section 2.13.

There is no evidence to suggest that the Respondent has made use of the disputed domain name in a manner that would bring it within any of the safe harbours of paragraph 4(c) of the Policy. Nor has the Respondent come forward to respond to the Complainant’s allegations. Rather, the Complainant’s evidence clearly suggests that the disputed domain name is being used in the furtherance of a fraudulent email scheme.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel notes that the Complainant’s DIAMOND RESORTS trademark substantially predates the Respondent’s registration of the disputed domain name. The Respondent’s knowledge of the Complainant and its trademarks can be readily inferred from the Respondent’s use of the disputed domain name, through which the Respondent has sought to impersonate the Complainant. Given that the use of a domain name for *per se* illegitimate activity such as phishing can never confer rights or legitimate interests on a

respondent, such behaviour is manifestly considered evidence of bad faith; see [WIPO Overview 3.0](#), section 3.1.4. The Panel finds that the Respondent registered the disputed domain name in an attempt to create a misleading impression of association with the Complainant, with a view to engaging in a fraudulent email scheme targeting the Complainant's customers, in bad faith.

The Panel further finds that by using the disputed domain name in the manner described above, the Respondent has intentionally attempted to attract, for commercial gain, Internet users, by creating a likelihood of confusion with the Complainant's trademark as to the source of email communications sent using the disputed domain name, in bad faith pursuant to paragraph 4(b)(iv) of the Policy. See *Rakuten, Inc. v. Marcos Carrillo, Marcos Carrillo*, WIPO Case No. [D2019-2979](#):

"The disputed domain name <rakutenmx.com> was registered on June 17, 2019, and, according to the evidence provided in the Complaint, it was used in connection with a fraudulent scheme involving the reselling of timeshares, namely by sending fraudulent email communications impersonating the Complainant (including using its marketing materials) and requiring the seller to pay various fees, such as commission and transfer fees.

[...]

This is a classic phishing scheme and establishes bad faith use and registration."

The Panel finds that the Respondent registered and is using the disputed domain name in bad faith. The Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <thediamond-resort.com> be transferred to the Complainant.

*/David Taylor/*

**David Taylor**

Sole Panelist

Date: July 13, 2022